

A. G. Contract No. KR-89-0667-TRD
ECS File: IGA-89-53
Project: CH S024701C
Section: Patte Rd @ SPRR

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
COCHISE COUNTY, ARIZONA

THIS AGREEMENT is entered into 3 July, 1989,
pursuant to Arizona Revised Statutes, Sections 11-951 through
11-954, as amended, between the STATE OF ARIZONA, acting by
and through its DEPARTMENT OF TRANSPORTATION (the "State") and
COCHISE COUNTY, acting by and through its Board of Supervisors
("County").

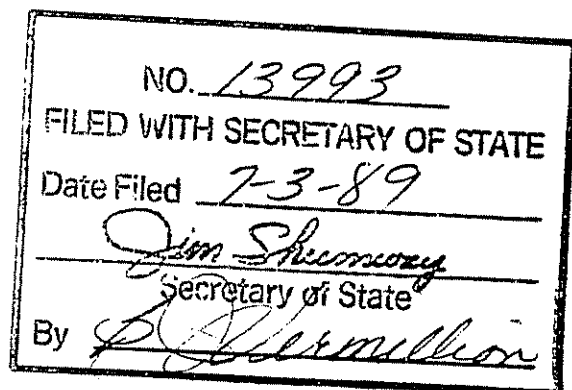
I. RECITALS

1. The State is empowered by Arizona Revised Statutes
Section 28-108 to enter into this agreement and has by
resolution, a copy of which is attached hereto and made a part
hereof, resolved to enter into this agreement and has
delegated to the undersigned the authority to execute this
agreement on behalf of the State.

2. County is empowered by Arizona Revised Statutes
Section 11-251 to enter into this agreement and has by
resolution, a copy of which is attached hereto and made a part
hereof, resolved to enter into this agreement and has
authorized the undersigned to execute this agreement on behalf
of the County.

3. Congress has authorized appropriations for the
erection of automatic warning signals, automatic gate arms,
plank crossings, pavement markings, and other appurtenances.

4. Such project within the boundary of the County has
been selected by the County; the field survey of the project
has been completed; and the plans, estimates and
specifications have been prepared and, as required, submitted
to the Federal Highway Administration ("FHWA") for its
approval.



5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the County by reason of federal law and regulations under which funds for the project are authorized to be expended.

6. The work embraced in this agreement and the estimated cost are as follows:

Furnish and install Flashing Light Grade Crossing signals with Automatic Gate Arms:

Furnish & Install	\$103,925.00
Construction Engineering	1,000.00
Preliminary Engineering	2,000.00
Total	\$106,925.00

Federal FHWA Funds (90%)	\$ 96,233.00
AZ Corp. Comm Funds(10%)	10,692.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will authorize the Railroad Company to proceed with the work covered by the State-Railroad Agreement and will enter into a Project Agreement with FHWA covering the work embraced in this agreement and will request the maximum federal funds available.

b. The State will furnish the County with a copy of the proposed Project Agreement to be entered into by the State and FHWA and the Railroad Company Agreement necessary for the full completion of this project. Upon approval of the terms and conditions of the Project Agreement and the State-Railroad Company Agreement by the County, the agreements shall be incorporated in and made a part of this agreement by reference and shall have the same force and effect as though fully written herein. Further, the County is bound by all the terms of the State-Railroad Company Agreement and will reimburse the State for the amount contracted for by and between the Railroad Company and State acting as agent for the County.

c. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of the County's deposit unless and until so authorized in writing by the County.

2. The County shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been acquired.

3. The County shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been removed therefrom.

4. The County shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the County shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the County.

5. Upon completion of construction, the County shall provide for, at its own cost and as an annual item in its budget, proper maintenance; such maintenance (exclusive of maintenance by the Railroad Company of its facilities) to include, but not be limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

6. The County shall mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

7. By such regulation as it may by ordinance provide, the County shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the County and that the County hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the County, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2. The cost of the work covered by this agreement is to be borne by FHWA and the County, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, in the event that funds to match federal funds are not made available by the Corporation Commission, the County agrees to furnish and provide the State with County funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be perpetual.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518(B) and (C).

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Engineering Consultants Services
205 South 17 Avenue, Room 118E
Phoenix, AZ 85007

Cochise County Engineer
Box AJ
Bisbee, AZ 85603

9. Attached hereto and incorporated herein is a copy of the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

COCHISE COUNTY, ARIZONA

STATE OF ARIZONA

Department of Transportation

By Ann English
Title Chairman

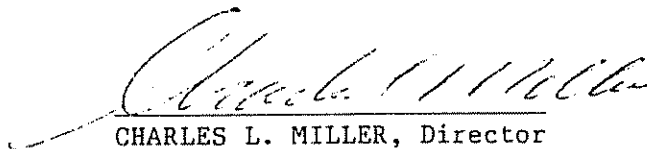
By Gary K. Robinson
GARY K. ROBINSON
Chief Deputy State Engineer

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RESOLUTION

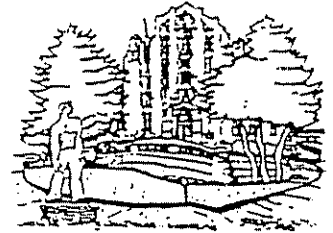
BE IT RESOLVED on this 12th day of April 1989, that I, CHARLES L. MILLER, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with Cochise County for the purpose of installing a Railroad Flashing Light Grade Crossing with automatic gate arms.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted for approval and execution by the Chief Deputy State Engineer.

A handwritten signature in cursive script, reading "Charles L. Miller", is written over a horizontal line.

CHARLES L. MILLER, Director
Arizona Department of
Transportation

BOARD OF SUPERVISORS COUNTY OF COCHISE



P.O. Box 225

Bisbee, Arizona 85603

Ann English
Chairman
District 2

Gene Manning
District 1

Kim Bennett
District 3

David Hunt
Administrator
Clerk

RESOLUTION 89-52

A RESOLUTION OF THE COCHISE COUNTY BOARD OF SUPERVISORS (HEREINAFTER REFERRED TO AS THE BOARD) APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE ARIZONA DEPARTMENT OF TRANSPORTATION AND THE COUNTY FOR THE ERECTION OF SAFETY DEVICES AT THE PATTE ROAD RAILROAD CROSSING

WHEREAS, the Board is empowered by Arizona Revised Statutes Section 11-251 to lay out, maintain, control and manage public roads, and;

WHEREAS, the Board is also empowered by Arizona Revised Statutes Section 11-952 to enter into agreements with other public agencies for joint action, and;

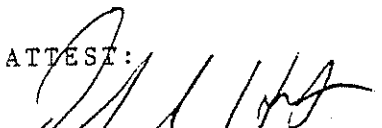
WHEREAS, Congress and the Arizona Corporation Commission have made funds available for the erection of automatic warning signals, automatic gate arms, and other appurtenances, and;

WHEREAS, the Board has determined that it is in the best interests of the public to enter into A. G. Contract No. KR 89-0667-TRD with the State for the installation of flashing light grade crossing signals with automatic arms on Patte Road (Project #CH S024701C) at the expense of the Federal Highway Administration and the Arizona Corporation Commission.


NOW THEREFORE BE IT RESOLVED that the Board approves this agreement (A. G. Contract No. KR-89-0667-TRD) and authorizes the submittal of this approved agreement to the Arizona Department of Transportation for execution.

DATED this 21 day of June, 1989, at Bisbee, Arizona.

ATTEST:

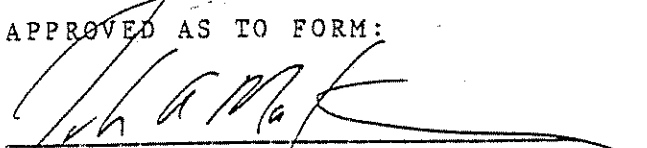


David S. Hunt
Clerk/Administrator
Cochise County, Arizona



Ann English, Chairman
Board of Supervisors
Cochise County, Arizona

APPROVED AS TO FORM:



John A. MacKinnon
Deputy County Attorney

(602) 432-5471

(FAX)
(602) 432-5076

INTERGOVERNMENTAL AGREEMENT DETERMINATION

RE: Patte Road and SPRR

The attached agreement, which is an agreement between public agencies, has been reviewed pursuant to A.R.S. §11-952 by the undersigned Deputy County Attorney who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to Cochise County.

Approved as to form this 16 day of June, 1989.

ALAN K. POLLEY
Cochise County Attorney

By: 

Deputy County Attorney

In accordance with A.R.S. §11-952 this Agreement has been reviewed by the undersigned who has determined that this Agreement is in appropriate form and within the powers and authority granted to the public body or bodies identified below.

This ____ day of _____, 19 ____.

By: _____

Public Agency Legal Counsel

Name of Public Body or Bodies



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert K. Corbin

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

A. G. Contract No. 42-89-0667-TRD, is an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 30th day of June, 1989.

ROBERT K. CORBIN
Attorney General

James R. Reppas
Assistant Attorney General
Transportation Division